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BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of

Amendment of Section 73.202(b)

Table of Allotments

FM Broadcast Stations

(New Richmond, Wisconsin, Coon Rapids  
and Moore Lake, Minnesota)

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)  
)  
)  
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MM Docket No. 00-37

RM-9749

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

## COMMENTS AND COUNTERPROPOSAL OF TKC, INC.

TKC, Inc. ("TKC"), licensee of WAQE-FM, by its attorneys, hereby submits its Comments and Counterproposal in response to the Commission's Notice of Proposed Rule Making ("NPRM"), released March 3, 2000. The NPRM seeks Comment on a proposal filed by Smith Broadcasting Company, Inc. ("Smith") which seeks to amend the Commission's FM Table of Allotments through the substitution of Channel 296C2 for Channel 296C3 at New Richmond, Wisconsin, the reallocation of Channel 296C2 from New Richmond, Wisconsin to Coon Rapids, Minnesota, and the modification of the license of Station WIXK-FM to specify Coon Rapids as its community of license. Specifically, TKC opposes Smith's request to substitute Channel 249A for 296A at Moose Lake, Minnesota and to modify the license of Station KBFH at Moose Lake as it will preclude the recently filed proposed upgrade of WAQE-FM to a Class C3 facility. Instead, TKC proposes that KBFH operate on Channel 280A rather than 249A, which is an alternative Smith found acceptable in its Petition for Rule Making ("Petition").<sup>1</sup>

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<sup>1</sup> See *Petition for Rule Making* filed by Smith Broadcasting Company, RM-9749, at 9-10 (September 22, 1999).

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## **BACKGROUND**

TKC is the licensee of station WAQE-FM, operating on Channel 249A, Barron Wisconsin. In an effort to improve service to Barron, TKC filed a one-step modification application to upgrade WAQE-FM from a Class A to a Class C3 facility. *See* FCC File No. BPH-19991005ABA. In its Petition, Smith is seeking Commission consent to modify the license of Station KBFH, Moose Lake, Minnesota, to operate on Channel 249A. However, the upgrade proposed by TKC is short-spaced to the reference point proposed by Smith. Thus, the modification application filed by TKC and the proposal advanced by Smith in its Petition are mutually exclusive and the Commission must resolve the mutual exclusivity issue of the two proposals as part of this rule making proceeding.<sup>2</sup>

TKC's counterproposal that KBFH operate on Channel 280A rather than 249A is in the best interest of all concerned parties and is consistent with the Commission's Rules and the public interest. Moreover, TKC's request is an alternative Smith has already found to be acceptable.<sup>3</sup> Not only will TKC's proposal allow Coon Rapids to acquire its first local service, it will also permit WAQE-FM to upgrade its facilities, resulting in a net gain of service to the

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<sup>2</sup> The proposals are mutually exclusive because TKC's modification application, filed October 5, 1999, was filed prior to the April 24, 2000, deadline established in the NPRM for filing comments and counterproposals. *See Amendment if the Commission's Rules to Permit FM Channel and Class Modifications by Application*, 73 RR 2d 247, 252 (1993) (stating that a conflict between a petition for rule making and an application to modify facilities filed prior to the deadline for counterproposals will be resolved in the rule making proceeding).

<sup>3</sup> *See Petition* at 9-10. In addition, Smith has provided a statement from Agate Broadcasting, Inc., permittee of Station KBFH, Moose Lake, Minnesota, consenting to have KBFH's facilities modified to "change from Channel 249A to Channel 249 A or 280A."

public. Given these considerations, the Commission should grant TKC's Moose Lake Channel substitution request.

**I. TKC's Proposal Does Not Adversely Affect Smith's Proposal And Will Allow Both Party's Proposals To Be Granted**

Although TKC need not here comment on Smith's goal of providing a first local service to Coon Rapids, TKC's counterproposal is mutually-exclusive with Smith's proposal to the extent that such proposal would preclude the proposed upgrade of WAQE-FM to Class C3.<sup>4</sup> Therefore, TKC proposes that the Commission substitute the proposed Moose Lake Channel allotment on Channel 280A, rather than 249A, as proposed in the NPRM. As demonstrated in the attached Engineering Statement prepared on behalf of TKC, this alternative allotment and the proposed one-step upgrade by WAQE-FM meet all of the Commission's spacing requirements. Moreover, in its Petition, Smith suggests that if "for any reason Channel 249A is not available as a substitution at Moose Lake ... Channel 280A is offered as an alternate channel ...."<sup>5</sup> As a result, all parties involved should be satisfied with the substitution of Channel 280A for Channel 296A.<sup>6</sup> This alternative will serve the public interest by enabling Station WAQE-FM to upgrade its

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<sup>4</sup> At this point, TKC believes there is no reason to comment on whether Smith's proposal is actually an attempt to serve the Minneapolis-St. Paul Urbanized Area under the guise of providing first local service to Coon Rapids. However, TKC reserves the right to file reply comments showing that the upgrade of WAQE-FM would better serve the public interest than would Smith's proposal to add another Channel to the Minneapolis-St. Paul Urbanized Area.

<sup>5</sup> *Petition* at 9-10.

<sup>6</sup> See Attachment 1, Engineering Statement, at 1. In the event that Channel 280A is not acceptable, Exhibit T-1 of the Engineering Statement indicates another alternative, Channel 295A for Moose Lake, which is also mutually exclusive of Channel 296A. Channel 295A is available with a site restriction 8.6 km east of Moose Lake.

facilities while also permitting Station WIXK-FM to accomplish its goal of providing a first local service to Coon Rapids, Minnesota.

In its decision to permit one-step upgrades, the Commission acknowledged that potential conflicts could arise between such applications and rule making petitions. *See Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments*, 73 RR 2d 222 (1993). In its Order, the Commission stated that it would attempt to resolve potential conflicts by either “imposing a site restriction on the proposal in the petition ... or by allotting an alternate channel for that proposed in the petition.” *Id.* at 225, n. 12. In *New Boston, Texas and Idabel, Oklahoma*, 12 FCC Rcd 15222 (MMB 1997), the Commission resolved competing proposals for the use of the same channel by finding an alternate channel. Adopting a new channel for the proposed operation of KBFH would resolve the current Channel conflict and would achieve each party’s goals.

An alternate channel clearly exists that would make it possible for Smith to provide a first local service to Coon Rapids while also allowing Station WAQE-FM to upgrade its facilities. As mentioned above, this can be accomplished by the operation of KBFH on Channel 280A, rather than on Channel 249A, as proposed in the NPRM. Because TKC is only proposing a channel substitution, it is not necessary for a decision to be made regarding whether Coon Rapids should receive a new first local service or whether Barron, Wisconsin should receive upgraded service on Channel 249, since both can coexist by having KBFH operate on an alternate channel. Simply substituting Channel 280A for Channel 249A would permit both proposals to be granted. Therefore, the Commission should grant TKC’s proposal because it will

allow all parties to meet the objectives they have raised in the requests now pending before the Commission.

## **II. TKC's Counterproposal Is Consistent With The Public Interest**

Accommodating TKC's counterproposal will satisfy the public interest. First, TKC's proposal will allow Smith to meet its objectives of providing Coon Rapids with its first local transmission service. Second, no persons will lose service if TKC modifies its operation from a Class A to a Class C3 facility. In fact, TKC's improved facilities will yield an increase in population and will serve 44,506 persons in its 60dbu contour. *See* Engineering Statement, at 2. As a Class C3 facility, TKC will have a net gain in population coverage with its 60dbu contour of 8,864 persons, which is an increase of approximately 25%. *Id.* Third, as demonstrated in the attached Engineering Statement, adoption of either of the proposed channel substitutions for KBFH would meet all of the Commission's minimum spacing requirements and would allow for the provision of service consistent with the proposals of both Smith and TKC. Finally, granting TKC's counterproposal will result in a more efficient use of the spectrum than will granting only Smith's proposal.

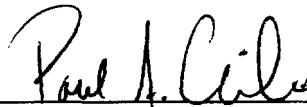
## **CONCLUSION**

For the reasons set forth above, TKC urges the Commission to adopt its proposal to substitute Channel 280A for Moose Lake, rather than Channel 249A. This counterproposal is an alternative that Smith has already found acceptable and is consistent with the Commission's

Rules and the public interest. Moreover, given that this proposal satisfies the concerns of all interested parties, the Commission should grant TKC's substitution request.

Respectfully submitted,

**TKC, INC.**

By: 

David D. Oxenford  
Paul A. Cicelski

Its Attorneys

SHAW PITTMAN  
2001 Pennsylvania Avenue, N.W.  
Suite 400  
Washington, D.C. 20006

Dated: April 24, 2000

## **ATTACHMENT 1**

**Engineering Statement  
In Support of  
Counter-Proposal to  
Notice of Proposed Rule Making  
TKC, Inc.**

April 19, 2000

**General:**

This Engineering Statement in support of a Counter-Proposal to Petition for Rule Making was prepared on behalf of TKC, Inc., ("TKC"), the licensee of FM Channel 249A (WAQE-FM), Barron, WI . It is prepared to counter-propose the Notice of Proposed Rule Making of Smith Broadcasting Company ("Smith") to change the community of license of WIXK from Channel 296C3 to Channel 296C2 at Coon Rapids, Minnesota.

The Smith petition calls for two changes in the FM Table of Allotments. Smith requests the deletion of Channel 296C3 at New Richmond, WI, and the substitution of Channel 296C2 at Coon Rapids, MN. In order to facilitate the substitution, Smith requests that Channel 296A (KBFH), Moose Lake, MN is modified to operate on either Channel 249A or 280A. Doing so will create clear channel spacing for the proposed C2 facility for Coon Rapids on Channel 296C2.

The purpose of this counter-proposal is to address the proposed channel change for Moose Lake, MN. Selecting Channel 249 for KBFH will preclude the Proposed One-Step Upgrade of WAQE-FM (See BPH-19991005ABA) recently filed by TKC.

While either Channel 249A or 280A will meet the Commission's criteria for allocation to Moose Lake, 249A was chosen first, as it appears that the channel will be fully spaced at the present KBFH transmitter site. Further, KBFH licensee Agate Broadcasting, Inc., ("Agate") has signed an agreement with Smith, as shown as an exhibit to the Notice of Proposed Rule Making, to accept either channel 249A or 280A.

KBFH currently operates on Channel 296A with a minimum Class A facility of 100 watts at -16 M HAAT.

WAQE-FM, licensed to Barron, WI was, until recently, a licensed C3 facility. TKC accepted a downgrade to Class A as part of a channel substitution and upgrade in Rice Lake, WI, (See BPH-19970221MF). It appears that Smith Broadcasting has recognized this, and has suggested an alternate channel (FM Channel 280) in the event Channel 249 was unavailable for allocation to Moose Lake.

**Discussion:**

In reviewing the associated engineering exhibits for the Smith proposal, we propose operation of KBFH on Channel 280A rather than 249A, as proposed in the original Rule Making. Further research indicates an additional alternative, in Channel 295A for Moose Lake, which is mutually exclusive of Channel 296A. Exhibit T-1 of this report shows 295A is available to Moose Lake, with a site restriction 8.6 KM east of Moose Lake, MN.



Further, we have determined that KBFH can continue operation on Channel 295A at its present location using 73.215 contour protection. Using its licensed facility, with as much as 1.0 KW (H&V) non-directional, and maximum Class A of 100 meters HAAT, and using a directional antenna if desired for 6 KW (H&V) operation. Canadian concurrence will be necessary, as the proposed operation on any channel is with 320 KM of the Canadian border.

Exhibit T-2 is a spacing study for Channel 295A, showing an area to locate KBFH as a fully spaced 6 KW Class A facility. It is within 16 KM of Moose Lake, and predicted 70 dBu city-grade contour will encompass all of Moose Lake, MN.

Exhibit T-3 is an interference study, assuming operation of KBFH at its licensed facility on Channel 295A, and with up to 1.0 KW non-directional operation. The study assumes short-spaced WJJY at maximum C1 facility. As shown, no interference is caused to or received by KBFH.

#### **Upgrade of WAQE-FM:**

Selecting Channel 280A or 295A, instead of 249A for Moose Lake will allow TKC proper FCC Channel spacing to restore WAQE-FM to Class C3 facility, improving radio service to the Rice Lake and Barron, WI area.

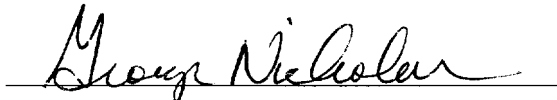
Exhibit T-4 is a map depicting the 6 KW Class A and proposed Class C3 WAQE-FM 60 dBu service contours. Comparing the 6 KW WAQE-FM facility and C3 facility as recently proposed to the Commission, service area gains 1,207 square KM, from 2,204 to 3,411, or an increase of approximately 55%. Population covered by the 1 mV (60 dBu) predicted contour gains 8,864 persons, from 35,642 to 44,506, or an increase of approximately 25%. Area coverage is determined by numerical integration and population figures are based on 1990 (1994) Census of Population.

#### **Summary:**

TKC counter-proposes the following Channel substitutions. Doing so will allow all proposals on file with the Commission to obtain:

| <b><u>Community:</u></b> | <b><u>Present:</u></b> | <b><u>Proposed:</u></b> |
|--------------------------|------------------------|-------------------------|
| New Richmond, WI         | 296C3, WIXK(AM)        | WIXK(AM)                |
| Coon Rapids, MN          | -----                  | 295C2                   |
| Moose Lake, MN           | 296A (KBFH)            | 280A or 295A            |
| Barron WI                | 249A (WAQE-FM)         | 249C3                   |

Any additional questions or comments may be addressed to the office of the undersigned.



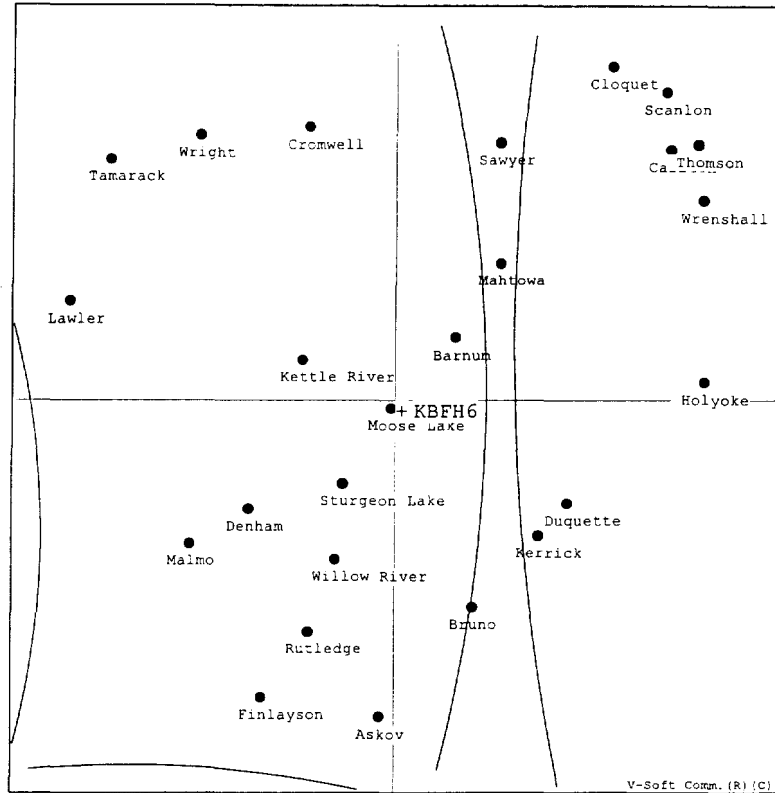
George Nicholas  
Technical Consultant for  
TKC, Inc.

EXHIBIT T-1 - Area to Locate  
KBFH Moose Lake MN as Class A on Channel 295

SEARCHFM<sup>(TM)</sup> LOCATE STUDY

Ch 295 A  
106.9 MHz

N. Lat. 46 27 10  
W. Lng. 92 45 47



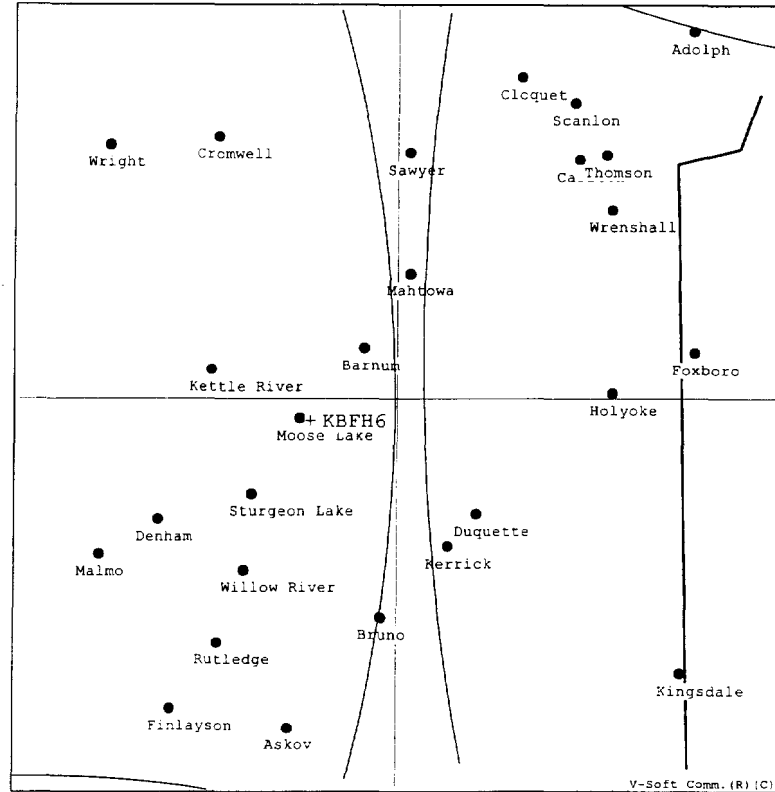
| Call   | CH#   | Location     |    | D-KM   | Azi   | FCC   | Margin |
|--------|-------|--------------|----|--------|-------|-------|--------|
| DE296  | 296A  | Moose Lake   | MN | 0.00   | 0.0   | 72.0  | -72.00 |
| KBFH   | 296A  | Moose Lake   | MN | 0.00   | 0.0   | 72.0  | -72.00 |
| WJJYFM | 294C1 | Brainerd     | MN | 124.40 | 270.1 | 133.0 | -8.60  |
| WUPM   | 295C1 | Ironwood     | MI | 211.35 | 88.4  | 200.0 | 11.35  |
| KLIZFM | 298C1 | Brainerd     | MN | 109.34 | 263.4 | 75.0  | 34.34  |
| AD296  | 296C2 | Coon Rapids  | MN | 142.05 | 190.3 | 106.0 | 36.05  |
| KAOD   | 294C2 | Babbitt      | MN | 152.01 | 25.0  | 106.0 | 46.01  |
| WATQ   | 294C2 | Chetek       | WI | 162.19 | 150.1 | 106.0 | 56.19  |
| AP292  | 292A  | Spooner      | WI | 91.77  | 137.8 | 31.0  | 60.77  |
| WNXR   | 297C3 | Iron River   | WI | 104.10 | 83.7  | 42.0  | 62.10  |
| DE296  | 296C3 | New Richmond | WI | 152.63 | 174.4 | 89.0  | 63.63  |
| WIXKFM | 296C3 | New Richmond | WI | 152.63 | 174.4 | 89.0  | 63.63  |
| AP292  | 292A  | Spooner      | WI | 95.05  | 135.3 | 31.0  | 64.05  |
| ALOPEN | 292A  | Spooner      | WI | 95.82  | 135.7 | 31.0  | 64.82  |
| WMFGFM | 292C3 | Hibbing      | MN | 107.19 | 352.4 | 42.0  | 65.19  |
| AP292  | 292A  | Spooner      | WI | 98.09  | 138.0 | 31.0  | 67.09  |
| KKJR   | 295C3 | Dassel       | MN | 209.76 | 222.3 | 142.0 | 67.76  |
| AP292  | 292A  | Spooner      | WI | 101.49 | 139.5 | 31.0  | 70.49  |

EXHIBIT T-2 - Area to Locate  
KBFH Moose Lake MN as Class A on Channel 295

SEARCHFM<sup>(TM)</sup> LOCATE STUDY

Ch 295 A  
106.9 MHz

N. Lat. 46 27 46  
W. Lng. 92 38 55



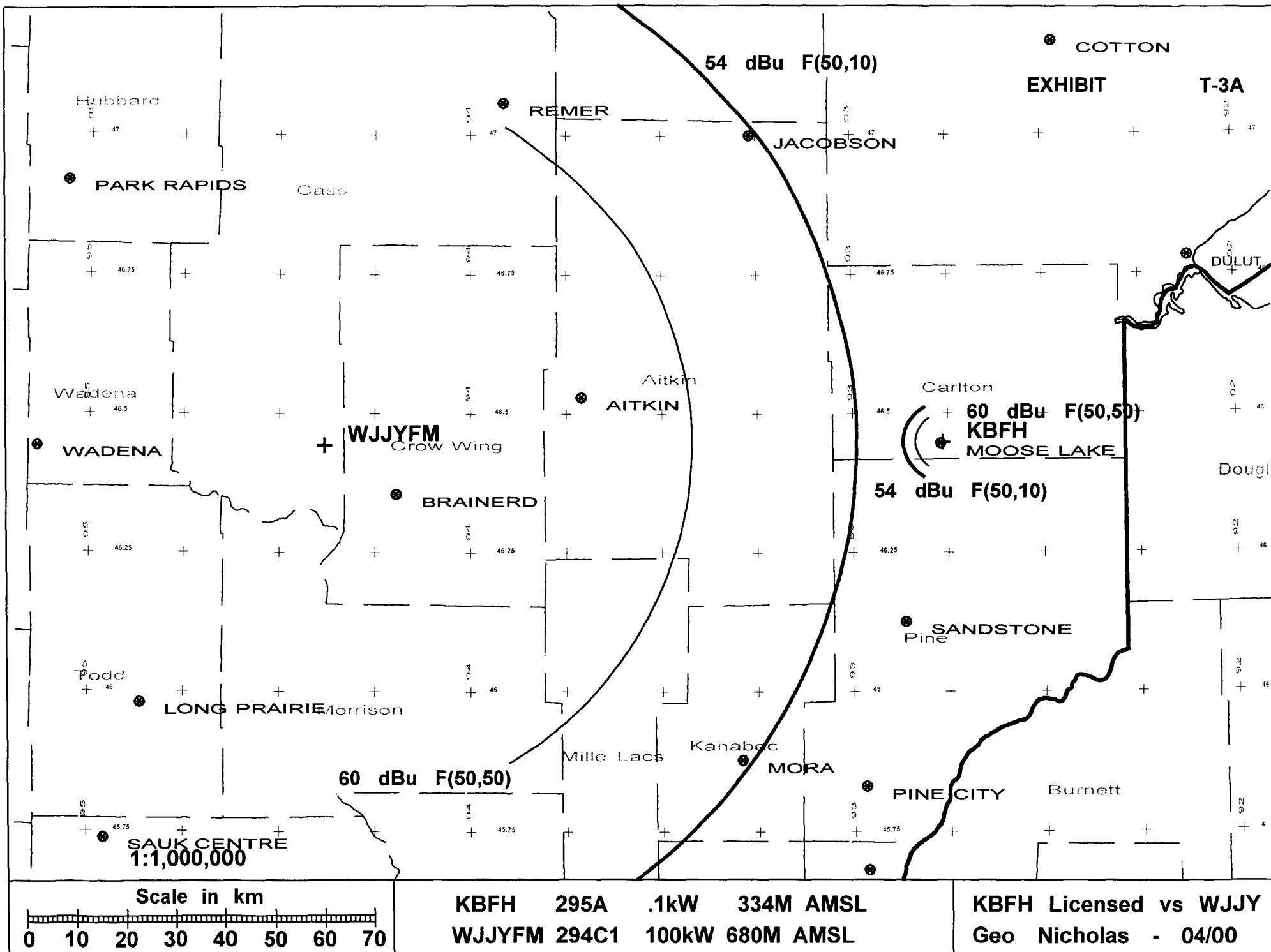
| Call   | CH#   | Location     |    | D-KM   | Azi   | FCC   | Margin |
|--------|-------|--------------|----|--------|-------|-------|--------|
| DE296  | 296A  | Moose Lake   | MN | 8.87   | 262.8 | 72.0  | -63.13 |
| KBFH   | 296A  | Moose Lake   | MN | 8.87   | 262.8 | 72.0  | -63.13 |
| WJJYFM | 294C1 | Brainerd     | MN | 133.20 | 269.7 | 133.0 | 0.20   |
| WUPM   | 295C1 | Ironwood     | MI | 202.52 | 88.8  | 200.0 | 2.52   |
| AD296  | 296C2 | Coon Rapids  | MN | 144.98 | 193.7 | 106.0 | 38.98  |
| KAOD   | 294C2 | Babbitt      | MN | 147.46 | 22.2  | 106.0 | 41.46  |
| KLIZFM | 298C1 | Brainerd     | MN | 118.21 | 263.5 | 75.0  | 43.21  |
| WATQ   | 294C2 | Chetek       | WI | 158.97 | 153.1 | 106.0 | 52.97  |
| WNXR   | 297C3 | Iron River   | WI | 95.23  | 83.9  | 42.0  | 53.23  |
| AP292  | 292A  | Spooner      | WI | 86.99  | 142.7 | 31.0  | 55.99  |
| AP292  | 292A  | Spooner      | WI | 89.93  | 139.9 | 31.0  | 58.93  |
| ALOPEN | 292A  | Spooner      | WI | 90.74  | 140.2 | 31.0  | 59.74  |
| AP292  | 292A  | Spooner      | WI | 93.30  | 142.5 | 31.0  | 62.30  |
| DE296  | 296C3 | New Richmond | WI | 153.13 | 177.8 | 89.0  | 64.13  |
| WIXKFM | 296C3 | New Richmond | WI | 153.13 | 177.8 | 89.0  | 64.13  |
| WMFGFM | 292C3 | Hibbing      | MN | 107.61 | 347.8 | 42.0  | 65.61  |
| AP292  | 292A  | Spooner      | WI | 96.90  | 144.0 | 31.0  | 65.90  |
| KKJR   | 295C3 | Dassel       | MN | 216.60 | 223.9 | 142.0 | 74.60  |

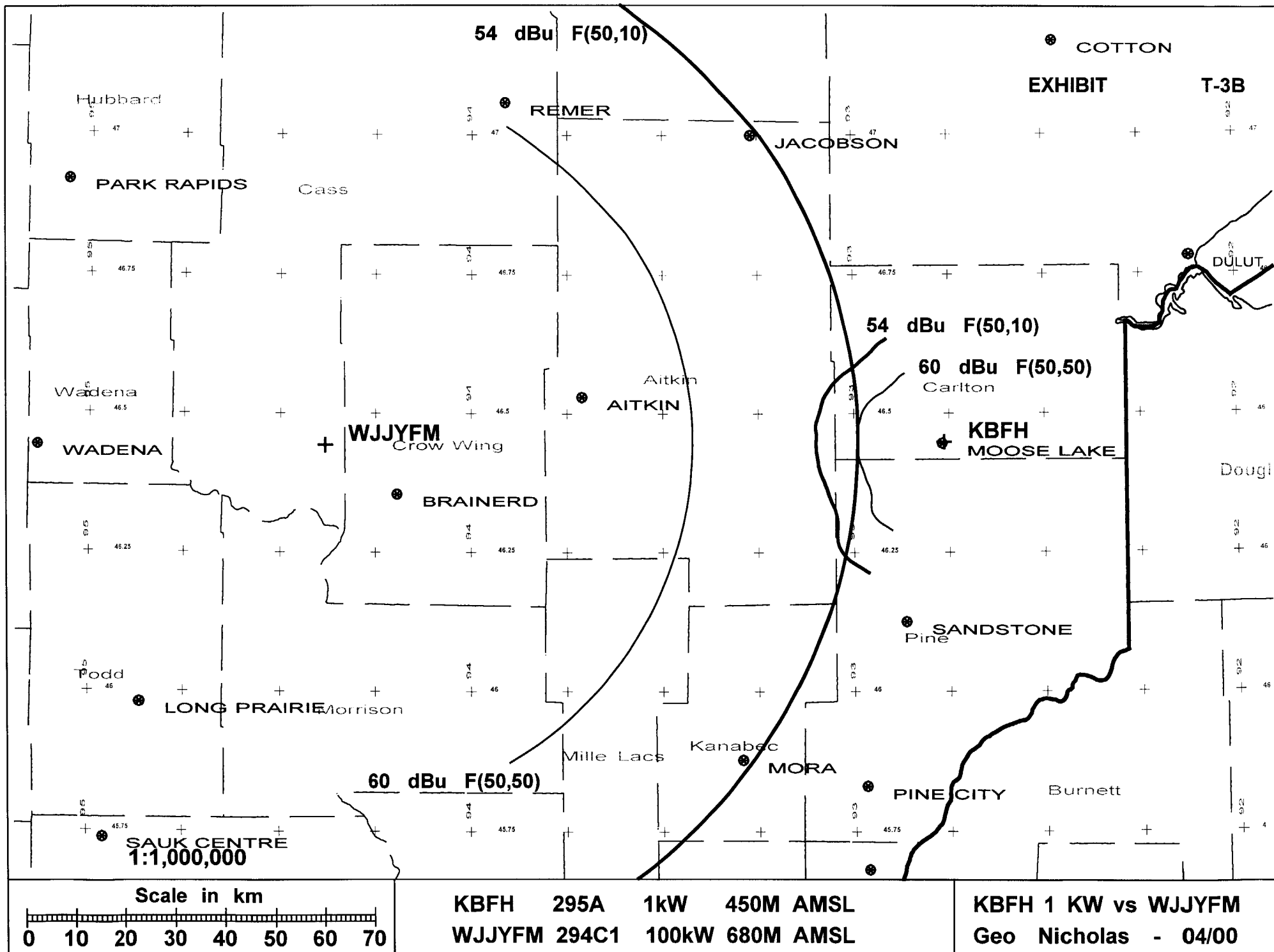
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April 19, 2000

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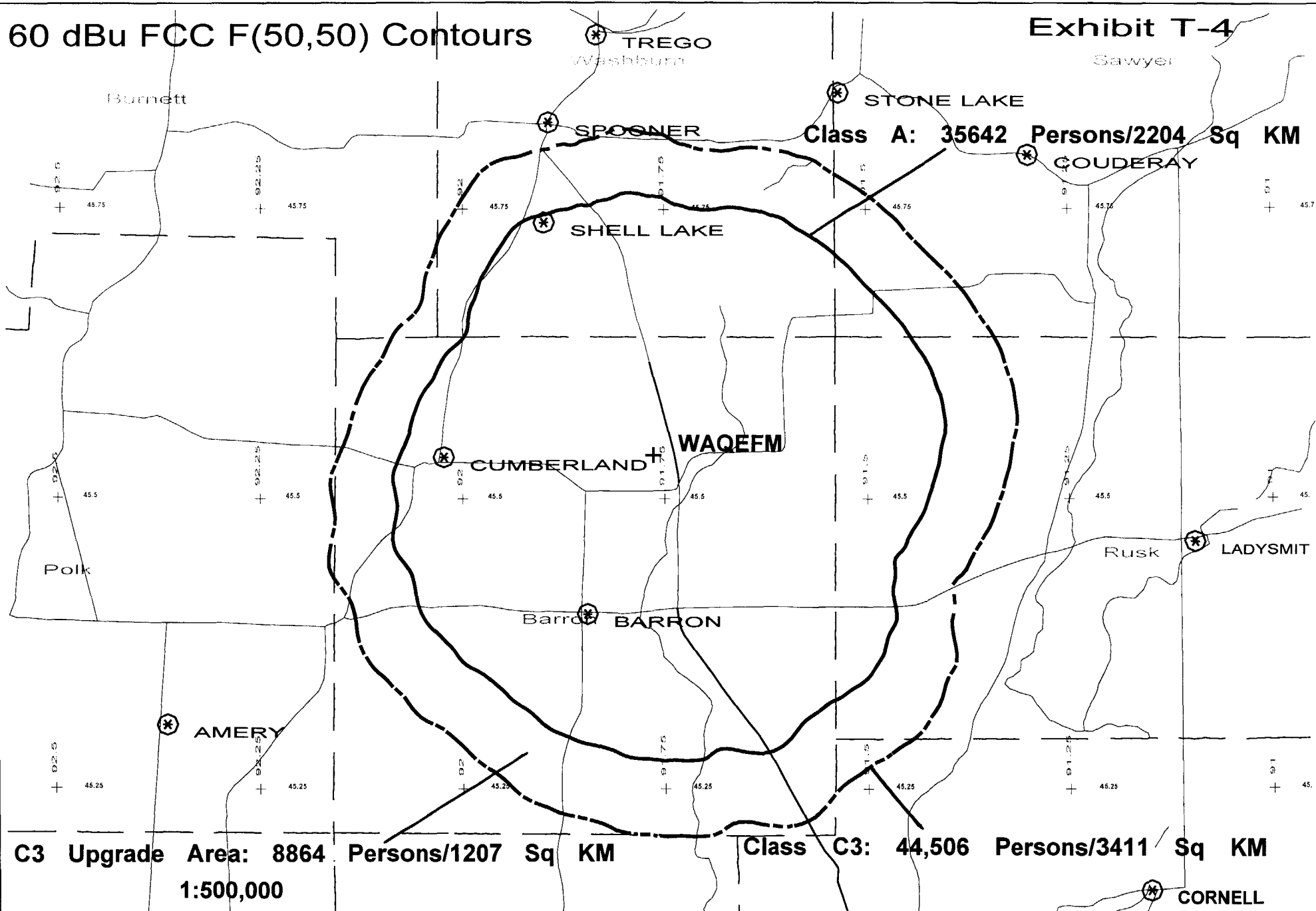
**Prepared by:  
George Nicholas, Broadcast Consultant  
3101 Falcon Ct NE  
Cedar Rapids, IA 52402**



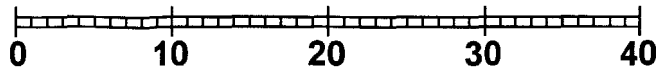


# 60 dBu FCC F(50,50) Contours

Exhibit T-4



Scale in km



**WAQEFM 249A 6 & 15 kW 455M AMSL**  
**N. Lat. 45 32 16 W. Lng. 91 45 50**

**WAQEFM - Barron, WI**  
**Geo Nicholas - 04/00**


***CERTIFICATE OF SERVICE***

I, Nora L. Luersen, a secretary in the law firm of Shaw Pittman, do hereby certify that true copies of the foregoing "*Comments and Counterproposal of TKC, Inc.*" were sent via U.S. Mail this 24<sup>th</sup> day of April 2000, to the following:

Mark N. Lipp  
Scott C. Cinnamon  
Shook, Hardy & Bacon  
600 14th Street, N.W., Suite 800  
Washington, DC 20005

Agate Broadcasting, Inc.  
ATTN: General Manager  
Station KBFH  
1104 Cloquet Avenue  
Cloquet, MN 55720

\*Kathleen Scheuerle  
Federal Communications Commission  
445 12th Street, S.W.  
Room 3-A247  
Washington, DC 20554

  
\_\_\_\_\_  
Nora L. Luersen

***\*VIA HAND DELIVERY***